



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application Of:)	Confirmation No. 8653
)	
George Michael MOCKRY et al.)	
)	Group Art Unit: 3711
Serial No.: 09/878,860)	
)	Examiner: M. Chambers
)	
Filed: May 10, 2002)	Attorney Docket No.: 006385.00001

For: **METHOD OF RECORDING AND PLAYING BASEBALL GAME SHOWING
EACH BATTER'S LAST PITCH**

PETITION FOR DELAYED ISSUANCE OF PATENT

MAIL STOP PETITION

Office of Petitions:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a petition requesting that the issuance of the subject application be delayed pending resolution of a previously filed petition (and any related judicial proceedings). The earlier-filed petition asks that the subject application be accorded a filing date of June 9, 2001, thus entitling applicants to the benefit of an earlier filed provisional application filed on June 13, 2000, instead of a filing date of May 10, 2002, as now appears on the records of the USPTO.

The petition is filed alternatively under 37 C.F.R. 1.182 or 37 C.F.R. 1.181(a)(3) pursuant to 37 C.F.R. 1.103(a). Applicants' undersigned representative requests that the fee required pursuant to 37 C.F.R. §§1.17(h) or otherwise, in order to consider this petition, be charged to our Deposit Account No. 19-0733. To the extent applicants may later be entitled to a refund of any fee so-charged, it should be credited to our Deposit Account No. 19-0733.

I. STATEMENT OF FACTS

1. On February 24, 2004 a Notice of Allowance was mailed in the subject application. The issue fee is due for payment on May 24, 2004.
2. On March 12, 2004, applicants filed a Request for Reconsideration and Entry of Final Agency Action in Connection with Petition for Correct Filing Date. The request seeks reconsideration of a decision (Paper No. 21, dated November 21, 2003) dismissing applicants renewed petition requesting that the subject application be accorded a filing date of June 9, 2001.
3. A decision on the Request has yet to be rendered. It is the undersigned's understanding that the Request was to be taken up for consideration beginning the week of May 17, 2004, but it is unknown when a decision will be rendered on the Request.
4. If an adverse decision is rendered, Applicants' present intent is to pursue judicial relief, e.g. a writ of *mandamus* in the appropriate court.
5. Other than the payment of the issue fee, which accompanies the filing of the Petition, no reply or other action is outstanding in this application.

II. REQUESTED RELIEF

In order to avoid having the patent issue with a filing date that has to be later adjusted, a circumstance that also will impact on applicants' entitlement to benefit of an earlier provisional application, applicants request that the issuance of a patent on the subject application be delayed.

Applicants' request is for an indefinite delay of issuance under Rule 182 or in the alternative a first suspension of action of six months under Rule 103, with leave to pursue additional suspension should the matter not be resolved in that time frame. While an indefinite delay pending final resolution of the pending petition and any subsequent judicial action would be preferred, at a minimum a delay of at least six months pursuant to a suspension under Rule 103 should at least be entered.

III. JUST CAUSE FOR DELAY OR SUSPENSION

Applicants in their earlier-pending petition have requested that the filing date accorded the subject application be corrected from May 10, 2002 to a filing date of June 9, 2001. If the filing date is corrected, either pursuant to the pending petition or in a subsequent judicial action, then applicants would be entitled to the benefit of their earlier provisional application, No. 60/211,208 filed on June 13, 2000. This benefit is currently unavailable based on the assignment of the May 2002 filing date to the subject application.

Correction of the filing date thus would necessitate an amendment to the specification to reflect applicants' entitlement to the benefit of that earlier provisional. In order to ensure that the patent issues with the proper filing date and proper benefit information, issuance of the patent should be delayed pending the final resolution of that issue. Otherwise, the grant patent may contain erroneous information and the procedure for correcting that information post-grant may be complex. It is not clear whether it could be done by Certificate of Correction, or whether a Reissue application would have to be pursued. Either way, both applicants and the public would have been disadvantaged by an original issuance with incorrect information.

Since this application is entitled only to a term running 20 years from the earliest effective filing date of the subject application, the public is not prejudiced by the delay or suspension sought by this petition.

The grant of this petition is respectfully requested.

Respectfully submitted,

BANNER & WITCOFF, LTD.

By: 

Joseph M. Skerpon
Registration No. 29,864

Date: May 24, 2004

1001 G Street, N.W.
Washington, D.C. 20001-4597
(202) 824-3000
JMS/